

The Orissa Gazette



EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 349 CUTTACK, MONDAY, MARCH 15, 2010/FALGUNA 24, 1931

LABOUR & EMPLOYMENT DEPARTMENT NOTIFICATION

The 2nd March 2010

No. 1691—li/1-(BH) - 83/2000(Pt.) - L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 26th December 2009 in Industrial Dispute Case No. 39 of 2001 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Executive Engineer, Baripada Electrical Division, Baripada and its Workman Shri Sudhanshu Sekhar Barik was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE
IN THE LABOUR COURT, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 39 OF 2001
Dated the 26th December 2009

Present :

Shri S. K. Dash,
Presiding Officer,
Labour Court, Bhubaneswar.

Between :

The Management of Executive Engineer, ... First Party—Management
Baripada Electrical Division,
Baripada.

And

Its Workman ... Second Party—Workman
Shri Sudhanshu Sekhar Barik,

Appearances :

For the First Party—Management ... Shri B. K. Pattnaik, Advocate

For the Second Party—Workman ... Shri Subrat Mishra, Advocate

AWARD

The State Government in exercise of powers conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Dispute Act, 1947 have referred the matter in dispute to this Court in the Labour & Employment Department Order No.14346— li/1-BH-83/2000-L.E., dated the 6th October 2001 for adjudication and Award.

2. The terms of reference may briefly be stated as follows :—

“Whether the termination of services of Shri Sudhanshu Sekhar Barik, ex-Typist by the Executive Engineer, Baripada Electrical Division (NESCO), Baripada with effect from the 1st August 1994 is legal and/or justified ? If not, what relief Shri Barik is entitled to ?”

3. The case of the workman in brief is that he joined as a Typist under the management at Baripada Electrical Division Office during October ,1991 on a wage of Rs.1200 per month and worked as such continuously up to 31-7-94 without any break of service to the satisfaction of the management .But after such long about four years of service, the workman was retrenched / terminated from service by the management from 1-8-94 without complying the mandatory provisions of Section 25-F of the Industrial Disputes Act,1947. After such termination he approached the Labor Authority raising an industrial dispute but ultimately it was ended in failure and the matter was referred to this Court by the Government for adjudication. The workman while challenging the action of the management in terminating his service with effect from 1-8-94 has prayed for his reinstatement in service with back wages along with other service benefits. Hence the reference.

4. The management appeared and filed written statement challenging the plea of the workman. According to the management, the workman was never engaged by the management at any point of time and he was never an employee under the management . As the workman was not an employee under the management, the question of retrenchment benefits does not arise and the provisions of Section 25-F of Industrial Dispute Act, 1947 is also not applicable to the present workman . In this back ground the workman is not entitled to get any relief as prayed for.

5. On the basis of the above pleadings of the parties the following issues have been framed :

I S S U E S

- (i) whether the termination of services of Shri Sudhanshu Sekhar Barik., ex –typist by the Executive Engineer, Baripada Electrical Division (NESCO), Baripada with effect from 1-8-94 is legal and /or justified ?
- (ii) if not, what relief Shri Barik is entitled to?

6. In order to substantiate his plea the workman has examined himself as W.W.1 and proved the documents marked as Exts. 1 to 4. Similarly, initially the management in order to substantiate its plea has examined one witness on its behalf as M.W. 1 namely Shri Sridhar Rout, the then Head Clerk of the management but has not proved any document. Basing such materials the case was disposed of on the 28th February 2005 by passing an Award. But such Award was quashed by the Hon'ble Court in W. P. (C) No. 7099 of 2005 and it was open for the parties to adduce evidence in

support of their respective cases. Thereafter, the workman has proved two more documents which were marked as Exts. 5 and 6 on his re-examination but has not examined any more witness. The management has examined one Rama Chandra Bag, retired Assistant Engineer as M.W. 2 but has not proved any document on its behalf.

FINDINGS

7. *Issue Nos. (i) and (ii)*—Both the issues are taken up together for discussion for convenient and being co-related.

According to W.W. 1 he was working as a Typist under the management with effect from October, 1991 till July, 1994 and was receiving salary at the rate of Rs. 500/- per month consolidated after signing in the voucher. While he was working under the management there was some vacancy and he made a representation to the Superintending Engineer, Electrical Circle, Balasore through proper channel vide Ext. 2 and the said representation was sent to the Superintending Engineer, Electrical Circle, Balasore. He also made another representation to the Deputy Manager (H. R.), GRIDCO, Bhubaneswar vide Ext. 3. In response to his representation the said Deputy Manager, Bhubaneswar sent a letter to the Executive Engineer, Baripada Electrical Division, Baripada requesting to furnish the detail information pertaining to periodicity of his engagement vide Ext. 4. He worked till the 31st July 1994 and thereafter the management refused his employment without giving any prior notice or notice pay and retrenchment compensation. One Rama Chandra Bag, the then Assistant Engineer, Baripada Electrical Division, Baripada had issued an experience certificate in his favour on the 8th September 2003 which has been marked as Ext. 5. A certificate issued by the Typing Institute in favour of the workman has been marked as Ext. 6. The management has challenged the evidence of the workman and denies that the documents filed by the workman are not genuine and proper. But strangely enough the management has admitted to have forwarded the representation of the workman vide Exts. 2. During cross-examination while putting question to W.W. 1. The M.W. 1, Head Clerk of the management while deposing in the Court denied about the appointment and work of the workman under the management and payment of any amount to him towards his wages through voucher. This witness has also admitted that the representation of the workman had been forwarded to the Superintending Engineer, Balasore on the request of his father. From the evidence of the witness it shows that the father of the workman W.W.1 was an employee of the management and he was acting as General Secretary of the Power Employee Union of the management. The M.W. 2 is the said Assistant Engineer who was issued the experience certificate to the workman. But while deposing in the Court on behalf of the management he denied to have issued any such certificate to the workman. He has clearly denied about his signature on Ext. 5. During evidence W.W. 1 has proved certain letters of different years in which his name has been typed out which has been marked as Exts. 1 to 1/e respectively. In the cross-examination the W.W.1 admits that he was not issued with any letter of appointment as Typist under the management but he was verbally told by the management to work as Typist and thereafter he has worked under the management for a period of more than three years from October, 1991 to July, 1994 continuously.

The representation of the workman which has been admittedly to have been forwarded to the concerned Authority clearly discloses that the workman had already taken the plea in his representation that he has been engaged as temporary Typist in the office of the Executive Engineer, Baripada Electrical Division, Baripada since October, 1991 and he can type 50 words in a minute. So, while forwarding the letter to the concerned authority, the management has not raised any objection to such contention of the workman and now the management has come forward with a plea that the workman was not working under him at any point of time. Ext. 3 also discloses that he has prayed for absorption in the post of Typist-cum-Clerk 'B' with further prayer for payment of his wages from 10/91 to 7/94. The management is silent regarding submission of the reply to the document Ext. 4, where the Deputy Manager (H.R.), GRIDCO, Bhubaneswar has requested the Executive Engineer, Baripada Electrical Division, Baripada to furnish the detail information pertaining to periodicity of engagement with payment and other particulars of the workman. The management has challenged the experience certificate issued by the then Assistant Engineer (M.W. 2) in favour of the workman. According to the management it is not according to the official procedure and M.W. 2 has no authority to issue such certificate and the concerned Executive Engineer is the Competent Authority to issue such certificate. However, a certificate has been issued in this regard which is under challenge. The M.W. 2 denied about issuance of such certificate by him and his signature thereon. The management has been directed by this Court vide Order No. 30, dated the 27th February 2009 to produce M.W. 2 in this Court on the 13th March 2009 to obtain his full and short signature in presence of both sides Advocates. If necessary, further order will be passed to send the same to the handwriting expert at the cost of the management. But neither the management produced the M.W. 2 nor M.W. 2 attended the Court thereafter to give specimen signature in this regard for comparison. So, an adverse inference can be drawn against the management about issuance of such experience certificate in favour of the workman and it can safely be presumed that such experience certificate has been issued by M.W. 2 in favour of the workman.

8. The workman in his statement of claim has mentioned about his wages to be Rs. 1200 per month whereas while deposing in this Court as W.W. 1 he has stated his wages to be Rs. 500 per month and he has receiving the same by way of voucher. But no such voucher has been produced in this Court and the workman has also not taken any step for production of such vouchers. However, now on careful consideration on the materials available in the case record, I came to the conclusion that the workman was working under the management as Typist for the above period.

9. The workman has successfully established that he had rendered continuous service for about more than three years but the management refused employment without assigning any reason and while terminating his service the management has not given any prior notice or notice pay and retrenchment compensation which is in complete violation of the mandatory provisions of Section 25-F of the Industrial Dispute Act. Law is well settled that a workman is entitled to one month notice before retrenchment or one month's pay in lieu thereof under Section 25-F of the

Industrial Dispute Act. Such notice or payment in lieu thereof is a condition precedent for effecting retrenchment. Therefore, compliance of Section 25-F of the Industrial Dispute Act is must, otherwise the order of termination becomes null and void. There is also no dispute that Section 25-F of the Industrial Dispute Act being a beneficial legislation, it has to be strictly complied with and is a mandatory pre-condition. But as it reveals from the materials available in the case record such pre-condition has not at all been followed by the management while terminating the service of the workman. It is settled principles of law that Section 25-F of the Industrial Dispute Act is mandatory and any violation thereof will render the retrenchment void *ab initio*. So, on a careful consideration of all the materials available in the case record as discussed above, I am of the considered view that the action of the management in terminating the service of the workman with effect from the 1st August 1994 was illegal, unjustified and against the mandate of Section 25-F of the Industrial Dispute Act. In that view of the matter the workman is entitled to the relief of reinstatement.

10. The perusal of the schedule of reference clearly emerges that the workman has been terminated from service with effect from the 1st August 1994. Nowhere it has been proved and established by the management that the workman had been gainfully employed elsewhere with effect from the date of his termination and in view of the settled principle of law by the Apex Court compensation in lieu of back wages amounting to Rs. 8,000 as lump sum will meet the ends of justice in this case. Both the issues are answered accordingly.

11. Hence ordered :

ORDER

That the termination of services of Shri Sudhanshu Sekhar Barik, ex-Typist by the Executive Engineer, Baripada Electrical Division (NESCO), Baripada with effect from the 1st August 1994 is neither legal nor justified. The workman Shri Sudhanshu Sekhar Barik is entitled to be reinstated in service with a lump sum compensation of Rs. 8,000 (Rupees eight thousand) only in lieu of back wages.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
26-12-2009
Presiding Officer
Labour Court
Bhubaneswar

S. K. DASH
26-12-2009
Presiding Officer
Labour Court
Bhubaneswar

By order of the Governor

K. C. BASKE

Under-Secretary to Government